

§ 197.4

12 CFR Ch. I (1–1–13 Edition)

(c) In a conversion from the mutual to the stock form of organization pursuant to part 192 of this chapter, except for a supervisory conversion undertaken pursuant to subpart C of part 192 of this chapter;

(d) In a non-public offering which satisfies the requirements of § 197.4 of this part;

(e) That are debt securities issued in denominations of \$100,000 or more, which are fully collateralized by cash, any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property;

(f) Distributed exclusively abroad to foreign nationals: *Provided*, That (1) the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not be required if the securities were not exempt under the Securities Act; or

(g) To its officers, directors or employees pursuant to an employee benefit plan or a dividend or interest reinvestment plan, and provided that any such plan has been approved by the majority of shareholders present in person or by proxy at an annual or special meeting of the shareholders of the savings association.

§ 197.4 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) of this section and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Securities Act and §§ 197.3(b) and 197.3(d) of this part. However, an issuer shall not be deemed to be not in compliance with the provisions of this section solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually

filed and all other conditions and requirements of this section are satisfied.

(a) *Regulation D*. The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501–230.506), except for the notice requirements of Commission Rule 503 (17 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d)).

(b) *Sales to 35 persons*. The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any accredited investor, officer, director or affiliate of the issuer. For purposes of paragraph (b) of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a pre-existing personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Filing of notice of sales.* Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this section, the issuer, shall file with the OCC's Securities and Corporate Practices Division, a report describing the results of the sale of securities as required by § 197.12(b) of this part.

(d) *Limitation on resale.* The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of § 197.1(a)(14) of this part, which reasonable care shall include, but not be limited to, the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser or for other persons;

(2) Written disclosure to each purchaser prior to the sale that the securities are not offered by an offering circular filed with, and declared effective by, the OCC pursuant to § 197.2 of this part, but instead are being sold in reliance upon the exemption from the offering circular requirement provided for by this section; and

(3) Placement of a legend on the certificate, or other document evidencing the securities, indicating that the securities have not been offered by an offering circular filed with, and declared effective by, the OCC and that due care should be taken to ensure that the seller of the securities is not an underwriter within the meaning of § 197.1(a)(14) of this part.

§ 197.5 Filing and signature requirements.

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this part shall, unless otherwise indicated, be filed in accordance with the requirements of §§ 192.115(a), 192.150(a)(6), 192.155, 192.180(b), and Form AC, General Instruction B, of this chapter.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this part shall include four copies of the document, one manually signed copy with exhibits and three conformed copies with exhibits, to be filed as follows:

(i) For a *de novo* savings association, with the appropriate District Counsel office; and

(ii) For an existing savings association, with the OCC's Securities and Corporate Practices Division.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, four copies of the offering circular used shall be filed with the OCC, as described in (b)(1).

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 4 copies have been filed with the OCC in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, or consent filed with the OCC pursuant to this part shall include an attached manually signed signature page which authorizes the filing and has been signed by:

(i) The issuer, by its duly authorized representative;

(ii) The issuer's principal executive officer;

(iii) The issuer's principal financial officer;

(iv) The issuer's principal accounting officer; and

(v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this part shall be signed by a person authorized to do so.

(3) At least one copy of every document filed pursuant to this part shall be manually signed, and every copy of a document filed shall:

(i) Have the name of each person who signs typed or printed beneath the signature;

(ii) State the capacity or capacities in which the signature is provided;

(iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and

(iv) With regard to any copies not manually signed, bear typed or printed signatures.